(1)

Supreme Court, U.S.
FILED

No. 941043 DEC 9 1994

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JOSEPH KAHAN,
Petitioner,

vs.

DAVID SEROR,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RICHARD MICHAEL MONEYMAKER
Counsel of Record

LAW FIRM OF RICHARD M. MONEYMAKER

700 South Flower Street
Suite 2102
Los Angeles, California 90017
(213) 622-1088

Attorneys for Petitioner
JOSEPH KAHAN

Lawyers Brief Service • Appellate Brief Printers • (213) 613-1013 • (714) 720-1510

87 pp

QUESTIONS PRESENTED

1. Did the Ninth Circuit Court of Appeals err in holding that the nature and extent of a debtor's exemption rights in his or her home are not fixed until a bankruptcy trustee sells the home; or did the Fifth, Eighth and Tenth Circuit Courts of Appeals correctly hold that such exemption rights are fixed as of the date the debtor files for bankruptcy?

2. Did the Ninth Circuit Court of Appeals err in holding that a bankruptcy trustee may wait years after a debtor's meeting of creditors to challenge the value of property which the debtor has claimed as exempt; or did the Eleventh Circuit Court of Appeals correctly hold that any such challenge must be made within 30 days of the debtor's meeting of creditors?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.	i
TABLE OF CONTENTS.	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	3
STATUTES AND RULES INVOLVED.	3
STATEMENT OF THE CASE.	7
BASIS FOR FEDERAL JURISDICTION . . .	10
STATEMENT OF FACTS	12
REASONS FOR GRANTING THE WRIT. . . .	21
I. THE NINTH CIRCUIT'S DECISION IN SEROR v. KAHAN DIRECTLY CONFLICTS WITH DECISIONS OF THREE OTHER CIRCUIT COURTS. .	24
II. THE NINTH CIRCUIT'S KAHAN DECISION DIRECTLY CONFLICTS WITH A DECISION OF THE ELEVENTH CIRCUIT COURT. . . .	29
III. THE NINTH CIRCUIT'S KAHAN DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN WHITE v. STUMP	32

TABLE OF CONTENTS - CONTINUED

Page

IV. THE NINTH CIRCUIT'S KAHAN DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN TAYLOR v.FREELAND & KRONZ. 34

V. THE NINTH CIRCUIT'S KAHAN DECISION CONFLICTS WITH THE PLAIN MEANING OF SECTIONS 522, 541 AND 544 OF THE BANKRUPTCY CODE 37

A. SECTIONS 522 AND 541 OF THE BANKRUPTCY CODE . . . 37

B. SECTION 544 OF THE BANKRUPTCY CODE 39

VI. THE NINTH CIRCUIT'S KAHAN DECISION CONFLICTS WITH THE 'FRESH START' POLICY UNDERLYING THE ENTIRE BANKRUPTCY CODE 44

CONCLUSION 46

APPENDIX A

OPINION, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 18, 1994. . . . . A-1

TABLE OF CONTENTS - CONTINUED

Page

APPENDIX B

ORDER DENYING PETITION FOR REHEARING AND REJECTING SUGGESTION FOR REHEARING EN BANC FILED SEPTEMBER 16, 1994 . . B-1

APPENDIX C

MINUTE ORDER, UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED AUGUST 19, 1994. . . . C-1

APPENDIX D

ORDER, UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA, ENTERED JANUARY 3, 1994. . . D-1

APPENDIX E

SCHEDULE B-1 - PROPERTY OF DEBTOR, FILED MARCH 31, 1994 . . . . E-1

APPENDIX F

SCHEDULE B-4 - PROPERTY CLAIMED AS EXEMPT, FILED MARCH 31, 1994 . . . . F-1

APPENDIX G

CLARIFICATION OF DEBTOR TO SCHEDULE B-4, FILED AUGUST 29, 1991. . . . G-1

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT **Page**

Allen v. Green (In re Green), 31 F.3d 1098 (11th Cir. 1994). .29-30

Everett v. Judson, 228 U.S. 474, 33 S. Ct. 568, 57 L. Ed. 927 (1913) 32-33

Grogan v. Garner, 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991) 44

Local Loan Co. v. Hunt, 292 U.S. 234, 54 S. Ct. 695, 78 L. Ed. 1230 (1934). 44

Taylor v. Freeland & Kronz, 503 U.S. ___, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992). 23, 29, 30, 34, 35, 36

United States v. Ron Pair Enter., Inc., 489 U.S. 235, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989) . . 37

White v. Stump, 266 U.S. 310, 45 S. Ct. 103, 69 L. Ed. 301 (1924) . 23, 26, 32, 33

CIRCUIT COURT OF APPEALS **Page**

Armstrong v. Peterson (In re Peterson), 897 F.2d 935 (8th Cir. 1990) . . . 24, 25, 26-27

Carroll v. Mansell (In re Mansell), 379 F.2d 682 (10th Cir. 1967). .25-26

TABLE OF AUTHORITIES - CONTINUED

CIRCUIT COURT OF APPEALS **Page**

Stinson v. Williamson (In re Williamson), 804 F.2d 1355 (5th Cir. 1986). 24-25

BANKRUPTCY APPELLATE PANELS **Page**

Hyman v. Plotkin (In re Hyman), 123 Bankr. 342 (9th Cir. BAP 1991), aff'd, 967 F.2d 1316 (9th Cir. 1992). 16, 17, 19

Miller v. Martin (In re Martin), 20 Bankr. 235 (9th Cir. BAP 1982). 41

BANKRUPTCY COURTS **Page**

Payne v. Crossroads of Hillsville (In re Payne), Virgina Law Weekly, September 12, 1994, VLW 094-4-041 (Bankr. W.D. Va. July 27, 1994). . 45

UNITED STATES STATUTES **Page**

11 U.S.C. § 157(b)(2)(B) 11
11 U.S.C. § 158(a) 11, 12
11 U.S.C. § 158(d) 12
11 U.S.C. § 522. 3-4, 24, 25, 27, 37-39
11 U.S.C. § 522(l) 6-7, 30, 35
11 U.S.C. § 541. . . . . 3-5, 24, 37-39
11 U.S.C. § 544. .3-6, 24, 39-41, 43-44
11 U.S.C. § 1254(1). 3

TABLE OF AUTHORITIES - CONTINUED

NATIONAL BANKRUPTCY RULES **Page**

Fed. R. Bankr. P. 4003(b). 6-7, 29, 30, 34

CALIFORNIA STATUTES **Page**

Cal. Civ. Proc. Code § 704.800(a). . 42

IN THE
SUPREME COURT OF THE UNITED STATES
October TERM, 1994

JOSEPH KAHAN,
Petitioner,

v.

DAVID SEROR,
Respondent,

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

The Petitioner respectfully prays that a Writ of Certiorari issue to review a decision of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit is reprinted as Appendix A herein. The citation to the Opinion is Seror v. Kahan (In re Kahan), 28 F.3d 79 (9th Cir. 1994).

After the Opinion was handed down,

Joseph Kahan filed, with the Ninth Circuit, a Petition for Rehearing and Suggestion for Rehearing En Banc of the Opinion. The Order denying the Petition for Rehearing and rejecting the Suggestion for Rehearing En Banc was filed by the Ninth Circuit on September 16, 1994 and is reprinted as Appendix B herein.

The Minute Order of the United States District Court, Central District of California, which was not published, is reprinted as Appendix C herein.

The Order of the United States Bankruptcy Court, Central District of California, which also was not published, is reprinted as Appendix D herein.

No testimony was taken or evidence presented at the hearing before the trial court, and no findings of facts

and conclusions of law were filed. Thus, no findings of fact or conclusions of law are reprinted herein.

JURISDICTION

The Opinion of the Court of Appeals for the Ninth Circuit, as amended, was filed on July 18, 1994, affirming the Minute Order of the United States District Court, Central District of California, which, in turn, affirmed the Order of the United States Bankruptcy Court, Central District of California, in favor of the Respondent. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1).

STATUTES AND RULES INVOLVED

The first question involved in this case is whether, under Sections 522, 541 and 544 of the Bankruptcy Code, the nature and extent of a debtor's interest in his or her exempt homestead is fixed

as of the date the debtor files for bankruptcy, or years later after the debtor's homestead has appreciated in value.

Section 522, which is entitled "Exemptions", provides in pertinent part that the "value" of property in which a debtor has an exemption interest is the property's "fair market value as of the date of the filing of the petition . . . ." (emphasis added).

Section 541, which is entitled "Property of the Estate", provides in pertinent part that:

> "(a) The commencement of a case under . . . this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) . . . all legal or equitable interests of the debtor in

property as of the commencement of the case."

(emphasis added).

Section 544, which is entitled "Trustee as lien creditor and as successor to certain creditors and purchasers", provides in pertinent part that:

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee . . ., the rights and powers of . . . -

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such

> a judicial lien, whether or not such a creditor exists;
>
> (2) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists . . .
>
> . .

(emphasis added).

The second question involved in this case is whether, under National Bankruptcy Rule 4003(b) and Section 522(l) of the Bankruptcy Code, a bankruptcy trustee may wait years after a debtor's meeting of creditors has been held to challenge the value of property which the debtor has claimed as

exempt.

Rule 4003(b) provides in pertinent part that:

> "The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors . . . or the filing of any amendment to the list or supplemental schedules . . . ."

(emphasis added).

Section 522(l) provides in pertinent part that:

> "The debtor shall file a list of property that the debtor claims as exempt . . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt."

(emphasis added).

STATEMENT OF THE CASE

This case involves two issues. The

first issue relates to whether the nature and extent of a debtor's exemption rights in his or her homestead are fixed as of the date the debtor files for bankruptcy, or years later when the debtor's homestead is sold. The second issue relates to whether an objection to the value of property which a debtor has claimed as exempt may be made years after the debtor's meeting of creditors has been held.

The courts of appeals for four circuits have divided on the first issue. Specifically, the Fifth, Eighth and Tenth Circuit Courts of Appeals have all held that the nature and extent of a debtor's interest in exempt property is determined as of the date the debtor files for bankruptcy. In contrast, the Ninth Circuit has now ruled that the nature and extent of a debtor's interest

in exempt property is not determined until the date a bankruptcy trustee sells the exempt property, at which point the hitherto exempt property may have appreciated in value significantly beyond its fixed petition date exemption amount.

The courts of appeals for two circuits have divided on the second issue. Specifically, the Eleventh Circuit Court of Appeals has held that any objection to the value of property which a debtor has claimed as exempt must be filed within 30 days of the debtor's meeting of creditors. Otherwise, the property which is claimed as exempt passes out of the debtor's bankruptcy estate and becomes the debtor's property. In contrast, the Ninth Circuit has now held that a debtor's exempt property never passes out of the debtor's bankruptcy

estate, even where no timely exemption objection is filed, because a bankruptcy trustee retains a perpetual right to challenge the value of the exempt property if the property ever appreciates in value beyond its fixed exemption amount.

The hearing of this case is of crucial importance because if the Ninth Circuit's minority ruling is allowed to stand it will completely eviscerate debtors' fresh starts by providing bankruptcy trustees with a perpetual right to object to, and to then sell, property which is fully exempt on the date a debtor files for bankruptcy, but which, years later, appreciates in value.

BASIS FOR FEDERAL

JURISDICTION

The jurisdiction of the United States

Bankruptcy Court for the Central District of California to consider the issue of the allowability of Kahan's homestead exemption claim is provided by 28 U.S.C. Section 157(b)(2)(B) which grants bankruptcy courts jurisdiction to hear core proceedings involving the allowance or disallowance of exemption claims.

The jurisdiction of the United States District Court for the Central District of California to hear Kahan's timely appeal from the bankruptcy court's final order against Kahan is provided by 28 U.S.C. Section 158(a) which grants district courts jurisdiction to hear appeals from final orders of bankruptcy courts.

The jurisdiction of the United States Court of Appeals for the Ninth Circuit to hear Kahan's timely Appeal from the

district court is provided by Section 28 U.S.C. Section 158(d) which grants the circuit courts of appeals jurisdiction to hear appeals from final orders of district courts entered pursuant to 28 U.S.C. Section 158(a).

STATEMENT OF FACTS

In the early 1980's, Kahan and his wife, Frieda, owned two corporations which operated a wholesale janitorial supply business in South Central Los Angeles. On March 9, 1985, a fire destroyed the entire janitorial business.

In September of 1985, the two corporations filed chapter 11 petitions in the United States Bankruptcy Court for the Central District of California. The two corporations, along with Kahan and his wife, then filed a 'bad faith' lawsuit in the bankruptcy court against

Firemen's Fund Insurance Company after Firemen's Fund refused to pay for the loss of the businesses. When the 'bad faith' lawsuit dragged on, Kahan was forced to file his own chapter 11 petition on March 31, 1986. Mrs. Kahan, however, did not file for bankruptcy.

In his bankruptcy petition, Kahan listed his interest in his home, which he and his wife owned as joint tenants, as an asset of his bankruptcy estate and scheduled the value of the home at $375,000.00. A copy of Schedule B-1 from Kahan's bankruptcy petition, which set forth Kahan's real property assets as of March 31, 1986, is reprinted as Appendix E herein. Kahan next scheduled the secured debt on the home as totalling $383,000. See Appendix E reprinted herein. In Schedule B-4 of

his petition, Kahan then claimed the home, which had no equity in it on the date Kahan filed for bankruptcy, as being a fully exempt homestead. A copy of Schedule B-4 from Kahan's bankruptcy petition is reprinted as Appendix F herein.

Kahan attended his chapter 11 meeting of creditors on May 16, 1986 and was examined both by the United States Trustee and by various creditors. During the pendency of the chapter 11 portion of Kahan's bankruptcy case, no objection was filed to Kahan's homestead exemption claim.

Subsequently, on July 25, 1990, the bankruptcy court converted Kahan's chapter 11 proceeding to chapter 7. Thereafter, on August 29, 1990, Seror filed his acceptance of his appointment as the interim chapter 7 bankruptcy

trustee for Kahan's bankruptcy case. A chapter 7 meeting of creditors was then held on November 8, 1990, at which time Seror's interim appointment was confirmed and Seror became the chapter 7 trustee for Kahan's case.

On December 7, 1990, Seror filed an objection to Kahan's exemption claim to Kahan's share of the proceeds from the then settled bad faith lawsuit against Fireman's Fund. Significantly, however, Seror, chose not to file, at that same time, any objection to Kahan's homestead exemption claim.

Meanwhile, since no objection had been made to Kahan's homestead exemption claim, Mrs. Kahan used her share of the proceeds from the settlement with Firemen's Fund to remodel the homestead and to pay down the trust deeds on the homestead from a balance of $383,000.00

to a balance of $214,000.00. Also, through July of 1991, Mrs. Kahan spent over $450,000.00 increasing the size of the homestead from 2,600 square feet to 4,200 square feet.

Thereafter, on February 20, 1991, the Bankruptcy Appellate Panel for the Ninth Circuit Court of Appeals handed down a decision in the case of Hyman v. Plotkin (In re Hyman), 123 Bankr. 342 (9th Cir. BAP 1991), aff'd, 967 F.2d 1316 (9th Cir. 1992), which held that a bankruptcy trustee's failure to file a timely objection to a debtor's homestead exemption claim did not prevent the bankruptcy trustee from later selling the homestead and keeping all postpetition appreciation in the value of the homestead, as long as the debtor was paid the fixed homestead exemption amount.

After the bankruptcy appellate panel's decision in Hyman was published, Seror, on July 30, 1991, filed a lawsuit against Mrs. Kahan seeking, pursuant to Section 363(h) of the Bankruptcy Code, to sell Mrs. Kahan's one-half joint tenancy interest in the homestead together with Kahan's one-half joint tenancy interest. Seror's complaint was based entirely on the bankruptcy appellate panel's holding in Hyman.

In response to Seror's complaint, Kahan, on August 29, 1991, filed a clarification to his Schedule B-4 which explained, in further detail, the legal bases for his homestead exemption claim. Kahan also set forth in the clarification the value of his one-half joint tenancy interest in the homestead as being $187,500.00, which was exactly

one-half of the $375,000.00 value which Kahan had previously declared for the entire homestead in his March 31, 1986 bankruptcy petition. See Appendix E reprinted herein. A copy of Kahan's clarified Schedule B-4 is reprinted as Appendix G herein.

On September 23, 1991, Seror filed an objection to Kahan's homestead exemption claim. The matter was briefed and then heard and argued before the bankruptcy court on October 15, 1991. Seror's complaint against Mrs. Kahan was also heard and argued on that same date.

Seror presented no evidence of any sort at either the hearing on his objection to Kahan's homestead exemption claim or at the trial on Seror's complaint against Mrs. Kahan. The matters were simply argued as motions.

Thereafter, on both matters, the bankruptcy court held in favor of Seror based upon the bankruptcy court's legal conclusion that the Hyman decision authorized its ruling.

A judgment authorizing the sale of the homestead was entered on January 3, 1992, and the Order sustaining Seror's objection to Kahan's homestead claim was also entered on that date. Since no evidence was presented, the bankruptcy court made no findings of fact with respect to either the judgment or the order.

Kahan timely filed his Notice of Appeal from the bankruptcy court's Order on January 10, 1992. On August 19, 1992, the United States District Court for the Central District of California filed its unpublished Minute Order affirming the decision of the bankruptcy

court.

On September 9, 1992, Kahan timely filed his Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the unpublished Minute Order of the district court. On July 18, 1994, the Ninth Circuit filed its published Opinion, as amended, holding that Seror could sell the Kahans' homestead and, as long as he paid Kahan the set monetary exemption amount, keep all postpetition appreciation in the value of the homestead.

On July 27, 1994, Kahan timely filed his Petition for Rehearing and Suggestion for Rehearing En Banc of the Ninth Circuit's published Opinion. On September 16, 1994, the Ninth Circuit filed its Order denying the Petition for Rehearing and rejecting the Suggestion for Rehearing En Banc.

REASONS FOR GRANTING THE WRIT

In this case, the Ninth Circuit has decided, in a published opinion, that a timely exemption objection is not required in order to fix the value of a debtor's exempt property as of the date the debtor files for bankruptcy. Instead, the Ninth Circuit has held that the value of exempt property is to be determined on the date a bankruptcy trustee sells the property. Even more disturbingly, the Ninth Circuit has held that a bankruptcy trustee may wait indefinitely to sell the exempt property so as to reap any postpetition appreciation which occurs in the value of the property beyond its fixed exemption amount.

This decision must not be allowed to stand for the following reasons. First, the Ninth Circuit's decision creates a

direct conflict with decisions in the Fifth, Eighth, Tenth and Eleventh Circuits. In so doing, the Ninth Circuit's decision capriciously punishes debtors who have the misfortune of living within the Ninth Circuit's jurisdiction. Additionally, the Ninth Circuit's decision creates grave uncertainty as to the marketability of all exempt property within the Ninth Circuit's jurisdiction because no buyer can be certain that a bankruptcy trustee will not, at some future date, claim an interest in property which was fully exempt on the date a debtor filed for bankruptcy, but which years later has appreciated in value beyond its fixed exemption amount. The effect of the ruling will be most pronounced with respect to homesteads because, over time, they invariably increase in value,

while the exemption amount applicable to them remains fixed as of the petition filing date.

Second, the Ninth Circuit's decision conflicts with this Court's decision in White v. Stump, 266 U.S. 310, 313, 45 S. Ct. 103, 104, 69 L. Ed. 301, 302 (1924), which holds that the filing date of a debtor's bankruptcy petition is the "cleavage" date for determining rights to exempt property.

Third, the Ninth Circuit's decision conflicts with this Court's decision in Taylor v. Freeland & Kronz, 503 U.S. ___, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992), by providing bankruptcy trustees with an indefinite time period to object to, and to then sell, property which was fully exempt on the date a debtor filed for bankruptcy.

Fourth, the Ninth Circuit's decision

conflicts with the plain meaning of Sections 522, 541 and 544 of the Bankruptcy Code.

Fifth, the Ninth Circuit's decision is contrary to the 'fresh start' policy underlying the entire Bankruptcy Code.

I. THE NINTH CIRCUIT'S DECISION IN SEROR v. KAHAN DIRECTLY CONFLICTS WITH DECISIONS OF THE FIFTH, EIGHTH AND TENTH CIRCUIT COURTS.

In Armstrong v. Peterson (In re Peterson), 897 F.2d 935 (8th Cir. 1990), Stinson v. Williamson (In re Williamson), 804 F.2d 1355 (5th Cir. 1986), and Carroll v. Mansell (In re Mansell), 379 F.2d 682 (10th Cir. 1967), the Fifth, Eighth and Tenth Circuits have all ruled that the nature and extent of a debtor's exemption rights in property, and in particular in

homesteads, are determined as of the date the debtor files for bankruptcy.

In so holding, the Fifth, Eighth and Tenth Circuits have been guided by the plain language of the applicable statutes, as well as precedent, policy considerations and, in the words of the Peterson court, "logic." Peterson, 897 F.2d at 937; see also Williamson, 804 F.2d at 1359; Mansell, 397 F.2d at 684.

With respect to plain language considerations, the Fifth and Eighth Circuits have noted in their decisions that the plain language of Section 522 mandates that the right to an exemption be determined as of the filing date of a debtor's bankruptcy petition. See Peterson, 897 F.2d at 935; Williamson, 804 F.2d at 1359.

With respect to precedent, the Eighth and Tenth Circuits have cited a number of cases which support the proposition that because exemptions "are fixed on the date of filing", courts should, in evaluating claims to such exemptions, "consider only the facts and circumstances as they exist on the date of filing . . . ." See Peterson, 897 F.2d at 935 (citing White, 266 U.S. at 313, 45 S. Ct. at 104, 69 L. Ed. at 302)(further citations omitted); see also Mansell, 379 F.2d at 684.

With respect to policy considerations, the Eighth Circuit has stated that the Bankruptcy Code's 'fresh start' policy supports examining only those facts in existence at the time of the debtor's filing because, otherwise, if postpetition facts "are allowed to alter a debtor's exemptions, uncertainty and

subsequent litigation could impede a debtor's fresh start." Peterson, 897 F.2d at 938. Further, permitting "postpetition facts to alter a debtor's homestead exemption might cause confusion in real estate titles and make it more difficult to finally resolve bankruptcy cases." Peterson, 897 F.2d at 938.

Lastly, with respect to logic, the Eighth Circuit has noted that because Section 522 mandates that a debtor's exemption rights be determined by the law applicable on the date the debtor files for bankruptcy, it would be "asymmetrical and confusing to apply the law existing on the date of filing to facts which arose sometime after the petition was filed." Peterson, 897 F.2d at 938.

In contrast to the Fifth, Eighth and

Tenth Circuits, the Ninth Circuit has now held that the value of a debtor's homestead is to be determined not as of the filing date of the debtor's bankruptcy petition but as of the date a bankruptcy trustee actually sells the debtor's homestead. Kahan, 28 F.3d at 82. Thus, under the Ninth Circuit's decision, even if a debtor's homestead is fully exempt on the date the debtor files for bankruptcy, as was Kahan's, the exempt homestead still may be sold by a bankruptcy trustee if the homestead, years later, increases in value. This is true, moreover, even where, as is the case here, the postpetition appreciation is due largely to a homeowner's simple paydown of the encumbrances on the property.

Accordingly, because the Ninth Circuit's Kahan ruling is in direct

conflict with the Fifth, Eighth and Tenth Circuits' rulings, and because the Ninth Circuit's ruling will seriously hinder debtors' fresh starts by creating a never ending cloud on debtors' title to their exempt property, certiorari should be granted to resolve the circuit conflict presented in this case.

II. THE NINTH CIRCUIT'S KAHAN DECISION DIRECTLY CONFLICTS WITH A DECISION OF THE ELEVENTH CIRCUIT COURT.

In Allen v. Green (In re Green), 31 F.3d 1098 (11th Cir. 1994), the Eleventh Circuit has ruled that any challenge to the value of property which a debtor has claimed as exempt must be made within 30 days of the debtor's meeting of creditors. The Eleventh Circuit's ruling is explicitly based on this Court's decision in Taylor, along with the plain language of Rule 4003(b) and

Section 522(l). See Green, 31 F.3d at 1100 ("In Taylor, the Court made clear that the Bankruptcy Code places the burden on the trustee to object, in a timely manner, to any improper exemption claims. The trustee may not wait until the value of a contingent claim is established before deciding to object within the period allowed by Bankruptcy Rule 4003.")(citing Taylor, 503 U.S. at ___, 112 S. Ct. at 1648, 118 L. Ed. 2d at 281; 11 U.S.C. § 522(l); Fed. R. Bankr. P. 4003).

In contrast to the Eleventh Circuit, the Ninth Circuit has now held that a bankruptcy trustee does not have to challenge the value of exempt property within 30 days of the debtor's meeting of creditors. Kahan, 28 F.3d at 82. Instead, the Ninth Circuit has ruled that a bankruptcy trustee may literally

wait years for the exempt property to appreciate in value and then move to challenge the petition date value of the hitherto exempt property. Kahan, 28 F.3d at 83. As a result, no debtor within the Ninth Circuit's jurisdiction can ever be entirely sure that his or her exempt property is actually exempt because the petition date value of the exempt property is subject to perpetual challenge by the debtor's bankruptcy trustee.

Accordingly, because the Ninth Circuit's Kahan ruling is in direct conflict with the Eleventh Circuit's ruling, and because the Ninth Circuit's ruling puts debtors in the untenable situation of not knowing when their exempt property is truly free from challenge, certiorari should be granted to resolve the circuit conflict

presented in this case.

III. THE NINTH CIRCUIT'S KAHAN DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN WHITE v. STUMP.

In White v. Stump, this Court held that a debtor was not entitled to claim a homestead as exempt because the facts, as they existed on the date the debtor filed for bankruptcy, precluded the debtor from making a valid exemption claim to the homestead. In so ruling, this Court held that, with respect to a debtor's right to an exemption, the "law discloses a purpose 'to fix the line of cleavage' with special regard to the conditions existing when the petition is filed . . . ." White, 266 U.S. at 313, 45 S. Ct. at 104, 69 L. Ed. at 302-03 (emphasis added)(quoting Everett v. Judson, 228 U.S. 474, 479, 33 S. Ct. 568, 569-70, 57 L. Ed. 927, 929

(1913))(other citations omitted).

In contrast to the holding of White, the Ninth Circuit has now held in the Kahan decision that even though a debtor's homestead is completely exempt from sale on the date the debtor files for bankruptcy, the debtor's bankruptcy trustee may still sell the exempt homestead years later because it is the facts in existence on the sale date of the homestead which control, rather than the facts which are in existence on the date the debtor's petition is filed. Kahan, 28 F.3d at 82.

Accordingly, because the Kahan decision conflicts with this Court's decision in White by looking to the facts in existence at some undetermined future sale date, rather than to the facts which are in existence on a debtor's petition filing date,

certiorari should be granted to resolve the conflict.

IV. THE NINTH CIRCUIT'S KAHAN DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN TAYLOR v. FREELAND & KRONZ.

In Taylor v. Freeland & Kronz, this Court held that, where a debtor claims property as exempt, the exempt status of the property cannot later be contested if no timely objection is made to the debtor's exemption claim. Taylor, 503 U.S. at ___, 112 S. Ct. at 1648, 118 L. Ed. 2d at 281. For an exemption claim objection to be considered timely, the objection must be made within 30 days of the debtor's "initial creditors' meeting." Taylor, 503 U.S. at ___, 112 S. Ct. at 1648, 118 L. Ed. 2d at 281 (citing Fed. R. Bankr. P. 4003(b)).

In this matter, Kahan's homestead

exemption claim was not objected to within 30 days of his May 16, 1986 chapter 11 meeting of creditors. Nor was Kahan's homestead exemption claim objected to within 30 days of his November 8, 1990 chapter 7 meeting of creditors. As a result, no matter which meeting of creditors' date the Ninth Circuit used to measure the applicable 30 day period, the Ninth Circuit should have concluded, pursuant to Taylor, that Kahan's homestead passed out of his bankruptcy estate prior to the filing of Seror's exemption objection on September 23, 1991. See 11 U.S.C. § 522(l) ("Unless a party in interest objects, the property claimed as exempt . . . is exempt").

Instead, the Ninth Circuit held that a clarification which Kahan filed more than five years after his initial

chapter 11 meeting of creditors, and more than nine months after his chapter 7 meeting of creditors, reopened the objection period and, thus, provided Seror with yet a third 30 day period for filing an objection to Kahan's homestead exemption claim. Such a holding, however, renders Taylor meaningless, not only be creating an extra time period to object, but also by allowing bankruptcy trustees to literally wait years before moving to 'recapture' exempt property which has already passed out of a debtor's bankruptcy estate.

Accordingly, because the Kahan decision conflicts with this Court's decision in Taylor by holding that Seror's exemption objection was timely, even though the objection was filed more than five years after Kahan's "initial creditors' meeting", certiorari

should be granted to resolve the conflict.

V. THE NINTH CIRCUIT'S KAHAN DECISION CONFLICTS WITH THE PLAIN MEANING OF SECTIONS 522, 541 AND 544 OF THE BANKRUPTCY CODE.

A. SECTIONS 522 AND 541 OF THE BANKRUPTCY CODE.

The basic rule of statutory construction is to interpret a statute according to its plain meaning. See United States v. Ron Pair Enter., Inc., 489 U.S. 235, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989). In Kahan, the Ninth Circuit has ignored this rule, along with the plain language of Sections 522 and 541 of the Bankruptcy Code, by holding that the value of Kahan's homestead should be determined by the "actual sale price" obtained on the postpetition sale date of Kahan's

homestead, rather than by the value of the homestead as of the filing date of Kahan's petition. Kahan, 28 F.3d at 82.

Specifically, the Kahan decision ignores that portion of Section 522 which states that the value of exempt property is its "fair market value as of the filing date of the petition . . . ." Likewise, the Kahan decision ignores that portion of Section 541 which states that a debtor's bankruptcy estate is comprised only of those legal or equitable interests in property which a debtor has "as of the commencement of the [debtor's] case." (emphasis added).

Accordingly, because under the plain language of Sections 522 and 541, the value of Kahan's homestead should have been determined as of the filing date of his petition, rather than at some undetermined future sale date,

certiorari should be granted to correct the Ninth Circuit's misapplication of Sections 522 and 541.

B. SECTION 544 OF THE BANKRUPTCY CODE.

The Ninth Circuit's Kahan decision ignores the plain language rule with respect to Section 544 of the Bankruptcy Code. Section 544 states that a bankruptcy trustee has only those rights and powers which a hypothetical judgment lien creditor would have against a debtor's property on the date the debtor's petition is filed:

> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee . . ., the rights and powers of . . . -
>
> (1) a creditor that extends credit to the debtor at the time

of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists . . . .

(emphasis added).

Thus, in order for Seror to sell Kahan's

homestead, Seror was required, pursuant to Section 544, to establish that, on the date Kahan filed for bankruptcy, a hypothetical judgment lien creditor could have forced a sale of Kahan's California homestead. See Miller v. Martin (In re Martin), 20 Bankr. 235, 237 (9th Cir. BAP 1982)("Section 544 . . . cannot impart to the trustee a quality other than what would characterize the rights of a California judgment creditor").

Under California law, the only way a hypothetical judgment lien creditor could have forced a sale of Kahan's homestead is if the value of Kahan's homestead, on his petition filing date, exceeded the amount of Kahan's homestead exemption "plus any additional amount necessary to satisfy all liens and encumbrances" on the homestead. Kahan,

28 F.3d at 82 (quoting Cal. Civ. Proc. Code § 704.800(a)). If the value of the homestead did not exceed the amount of the homestead exemption plus the encumbrances on the homestead, then the hypothetical judgment lien creditor would have been barred from selling Kahan's homestead and the homestead would then have had to be released to Kahan. See Cal. Civ. Proc. Code § 704.800(a) ("If no bid is received at a sale of a homestead . . . that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, the homestead shall not be sold and shall be released")(emphasis added).

In this case, the undisputed facts showed that as of the filing date of Kahan's petition, Kahan's one-half joint

tenancy interest in his $375,000.00 homestead was worth $187,500.00, and that the encumbrances and homestead exemption amount on Kahan's homestead totalled $428,000.00 (i.e. $383,000 for the encumbrances and $45,000.00 for the exemption amount). Thus, because the $428,000.00 figure clearly exceeded the $375,000.00 value of Kahan's homestead, not to mention the $187,500.00 value of Kahan's half interest in the homestead, the Ninth Circuit should have ruled that Kahan's homestead could not be sold because it was fully exempt from sale on the petition date. The Ninth Circuit chose, however, to ignore the plain language of Section 544 by holding that the value of Kahan's homestead on the postpetition sale date was what mattered, rather than the value of Kahan's homestead on his petition filing

date.

Accordingly, because the Ninth Circuit has ignored the plain meaning of Section 544 in the Kahan decision, certiorari should be granted to correct the Ninth Circuit's misapplication of Section 544.

VI. THE NINTH CIRCUIT'S KAHAN DECISION CONFLICTS WITH THE 'FRESH START' POLICY UNDERLYING THE ENTIRE BANKRUPTCY CODE.

As this Court stated in Grogan v. Garner, "a central purpose of the Code . is to provide a . . . 'fresh start' . . . 'to the honest but unfortunate debtor.'" Grogan v. Garner, 498 U.S. 279, 286, 111 S. Ct. 654, 659, 112 L. Ed. 2d 755, 764 (1991)(quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244, 54 S. Ct. 695, 699, 78 L. Ed. 1230, 1235 (1934)).

In this case, it is undisputed that

Kahan is an honest debtor. Nevertheless, the Ninth Circuit has decided that the asset which has the single most importance to Kahan's 'fresh start', i.e. his homestead, may be sold years after Kahan has filed for bankruptcy because the homestead, which was fully exempt when Kahan filed, has since appreciated in value. But see Payne v. Crossroads of Hillsville (In re Payne), Virgina Law Weekly, September 12, 1994, VLW 094-4-041 (Bankr. W.D. Va. July 27, 1994)("[The] concept of a 'fresh start' includes reaping the fruits of post-petition appreciation of the debtor's real estate"). To add insult to injury, the Ninth Circuit has further concluded that it matters not that the appreciation in the value of Kahan's homestead is due solely to the postpetition payments and improvements

which Frieda Kahan made on the homestead.

Accordingly, because the Ninth Circuit's Kahan decision guts the Bankruptcy Code's 'fresh start' policy by giving a debtor's bankruptcy trustee a perpetual right to sell debtor property which was fully exempt when the debtor filed for bankruptcy, but which has since appreciated in value, certiorari should be granted to review the Kahan decision.

CONCLUSION

WHEREFORE, Petition, Joseph Kahan, prays that a writ of certiorari issue form this Honorable Court to review the judgment of the United States Court of Appeals for the Ninth Circuit in Seror v. Kahan (In re Kahan), 28 F.2d 79 (9th Cir. 1994). In the event the petition is granted, Petitioner prays that the

judgment of the Ninth Circuit be reversed and that the cause be remanded with directions to reverse both the judgments of the United States District Court for the Central District of California and the United States Bankruptcy Court for the Central District of California.

Respectfully Submitted,

Richard Michael Moneymaker
Counsel of Record
Law Firm of Richard M. Moneymaker
700 South Flower Street, Suite 2102
Los Angeles, California 90017
(213) 622-1088
Attorneys for Petitioner,
Joseph Kahan

APPENDIX A

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In re JOSEPH KAHAN, *Debtor.*	No. 92-56155
DAVID SEROR, *Plaintiff-Appellee,* v. JOSEPH KAHAN, *Defendant-Appellant.*	D.C. No. CV 92-2607 WDK ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the Central District of California
William D. Keller, District Judge, Presiding

Argued and Submitted
March 8, 1994—Pasadena, California

Opinion Filed May 19, 1994
Amended July 18, 1994

Before: Harry Pregerson, Diarmuid F. O'Scannlain, and Ferdinand F. Fernandez, Circuit Judges.

Opinion by Judge Pregerson

ORDER

The opinion filed May 19, 1994 is amended as follows:

At page 5249 of the slip opinion after footnote 5, delete the balance of that paragraph and insert the following: "The exis-

tence of encumbrances relates only to the propriety of a forced sale under California law, an issue which is irrelevant to the question on appeal of whether and to what extent the Property is part of the bankruptcy estate. We do not charge the Trustee with notice of an all-encompassing exemption claim where the schedules indicate that Mr. Kahan had no equity in the Property and that, therefore, there might be no value for the estate."

OPINION

PREGERSON, Circuit Judge:

Chapter 7 debtor Joseph Kahan ("Mr. Kahan") appeals the district court's judgment affirming the bankruptcy court's order finding that Mr. Kahan's homestead exemption under California law is limited to $45,000.00. Mr. Kahan holds his residence in joint tenancy with his wife, Frieda L. Kahan ("Mrs. Kahan"), who did not declare bankruptcy. He contends that his entire one-half interest in the property is exempt from the bankruptcy estate. We have jurisdiction under 28 U.S.C. § 158(d). *White v. White (In re White)*, 727 F.2d 884, 885-86 (9th Cir. 1984) (an order granting or denying a homestead exemption is immediately appealable). We affirm.

BACKGROUND

On March 31, 1986, Appellant Mr. Kahan filed a Chapter 11 petition for bankruptcy relief. With his petition, Mr. Kahan filed a schedule entitled Schedule B-1 — Real Property, that listed as his asset the real property at 177 South Poinsettia Place, Los Angeles, California 90036 [hereinafter the Property]. Mr. Kahan holds the Property in joint tenancy with his wife; disposition of her interest in the Property is not before us. He listed $375,000.00 as the Property's fair market value and listed four trust deed obligations which together exceeded

$375,000.00. Mr. Kahan also filed a schedule entitled Schedule B-4 — Property claimed as exempt, that listed the Property as exempt under Cal. Civ. Proc. Code § 704.740, to the extent of $45,000.00. A creditors' meeting was held on May 16, 1986, after which nobody filed objections to the claimed exemption.

Four years later, on July 23, 1990, Mr. Kahan's bankruptcy was converted from a Chapter 11 (reorganization) proceeding, 11 U.S.C. §§ 701-66, into a Chapter 7 (liquidation) proceeding, 11 U.S.C. §§ 1101-46. Respondent David Seror [hereinafter the Trustee] was appointed as Trustee to administer Mr. Kahan's estate. The Trustee commenced an adversary proceeding against Mrs. Kahan to enable him to sell the Property free and clear of her interest.[1]

On August 29, 1991, Mr. Kahan filed and served a document entitled Amended Schedules, which consisted of a Schedule B-4 form. Under the Amended Schedule B-4, Mr. Kahan claimed an exemption for his entire joint tenancy interest in the Property; the stated fair market value of his one-half interest was $187,500.00. For authority, Mr. Kahan relied on Cal. Civ. Proc. Code §§ 704.710(c) and 704.720(a), as well as § 522(b)(2)(B) of the Bankruptcy Code as interpreted by our court in *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317 (9th Cir. 1991), and by the California court of appeal in *Schoenfeld v. Norberg*, 90 Cal. Rptr. 47 (Cal. Ct. App. 1970).[2] In addition, the Amended Schedule stated that if the Property were

[1]The Bankruptcy Code permits the Trustee to "sell both the estate's interest ... and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety" provided that certain conditions are met. 11 U.S.C. § 363(h); Bankr. R. 7001(3). As explained *infra* note 3, the merits of the Trustee's claim against Mrs. Kahan are not part of this appeal.

[2]In the column that asked Mr. Kahan to specify the statute creating the claimed exemption, Mr. Kahan did not list § 704.710 but mistakenly listed § 704.170.

sold, Mr. Kahan would be entitled to $45,000.00 of the sale proceeds pursuant to § 704.730(a)(2).

On September 24, 1991, the Trustee filed an Objection to Amended Homestead Exemption, asserting that Mr. Kahan's homestead exemption is limited to $45,000.00. The bankruptcy court entered an Order sustaining the Trustee's objections to Mr. Kahan's Amended Schedule.

Mr. Kahan appealed to the district court. The district court agreed with the bankruptcy court's analysis and affirmed the Order. Mr. Kahan appeals.[3]

ANALYSIS

We review the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. *Briggs v. Kent (In re Professional Inv. Properties of America)*, 955 F.2d 623, 626 (9th Cir.), *cert. denied*, 113 S. Ct. 63 (1992).

The bankruptcy estate includes all of the debtor's interests in property at the commencement of the case, except property that the debtor elects to exempt based on applicable federal or state law. 11 U.S.C. §§ 541(a), 522 (b)(2). California has a homestead exemption statute. Under that statute, "the proceeds of sale [of a homestead] . . . are exempt in the amount of the homestead exemption provided in Section 704.730."

[3]The bankruptcy court also entered a judgment on the Trustee's § 363(h) complaint, authorizing the Trustee to sell the Property free and clear of Mrs. Kahan's interest. Mrs. Kahan appealed the decision to the district court (No. CV 92-2606 WDK), and on July 27, 1993, the court vacated the judgment and remanded the case to the bankruptcy court. Because Mrs. Kahan's case is not part of this appeal, we do not decide whether or under what conditions the Trustee may sell the Property. This appeal presents only the narrow question of whether Mr. Kahan is entitled to more than a $45,000.00 homestead exemption. Any detriment that Mrs. Kahan might suffer from a sale of the Property affects only the propriety of a sale, not the amount of Mr. Kahan's homestead exemption.

Cal. Civ. Proc. Code § 704.720(b) (West 1982). When Mr. Kahan filed his Chapter 11 petition, section 704.730 provided for a homestead exemption in the amount of $45,000. Cal. Civ. Proc. Code § 704.730(a)(2) (exemption for judgment debtor who, at the time of an attempted sale, is a member of a family unit, if at least one family member owns no interest in the homestead); *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1318 n.2 (9th Cir. 1992) (ignoring as irrelevant post-petition statutory amendment that increases the applicable exemption amount) (citing *Harris v. Herman (In re Herman)*, 120 B.R. 127, 130 (Bankr. 9th Cir. 1990)); *Magallanes v. Williams (In re Magallanes)*, 96 B.R. 253, 255 (Bankr. 9th Cir. 1988) (Property of the estate is determined by the Chapter 11 filing date if a case is converted to Chapter 7.).

1. Timeliness of the Trustee's Objection to Mr. Kahan's Claimed Homestead Exemption

To apply the homestead exemption in bankruptcy, Mr. Kahan, as debtor, must "file a list of property that [he] claims as exempt . . . ." 11 U.S.C. § 522(l). A "list [or] schedule . . . may be amended by the debtor as a matter of course at any time. . . ." Bankr. R. 1009(a). With Mr. Kahan's Chapter 11 petition, he filed a Schedule B-4 that listed the Property as exempt to the extent of $45,000.00. On August 29, 1991, in the Chapter 7 proceedings, Mr. Kahan filed an Amended Schedule that listed the Property as exempt to the extent of his entire joint tenancy interest, valued at $187,500.00.

[1] Mr. Kahan contends that he is entitled to an exemption of $187,500.00 because the Trustee failed to file a timely objection. "Unless a party in interest objects, the property claimed as exempt on [the filed] list is exempt." 11 U.S.C. § 522(l). "The trustee . . . may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors . . . *or the filing of any amendment* to the list . . . ." Bankr. R. 4003(b) (emphasis added). The Trustee did not object to Mr. Kahan's initial Schedule B-

4 (filed on March 31, 1986); he filed an objection to the Amended Schedule on September 24, 1991. The Trustee's objection was timely filed because the filing occurred within 30 days of the filing of the Amended Schedule.

[2] Mr. Kahan contends that the second schedule did not reopen the time to object because it was merely a clarification of the March 1986 Schedule. We disagree. The Amended Schedule differed significantly from the initial schedule by claiming a higher exemption amount. We read Mr. Kahan's initial exemption claim as limited to the "value claimed exempt," namely $45,000.00, rather than as a broad exemption claim that covered his undivided one-half interest in the Property. Mr. Kahan's arguments are identical to those made and rejected in *In re Hyman*. In that case, the debtors listed "homestead" as an exemption and valued the exemption at $45,000.00, but then claimed that the entire homestead was exempt because the trustee never objected. We held that the debtors' homestead exemption was limited to $45,000.00:

> [They] did not sufficiently notify others that they were claiming their entire homestead as exempt property; their schedule only gave notice that they claimed $45,000 as exempt, which is the proper amount of their homestead allowance .... Thus, the trustee had no basis for objecting ... to the $45,000 exemption to which the [debtors] were clearly entitled.

In re Hyman, 967 F.2d at 1319. Mr. Kahan's initial Schedule did not put the Trustee on notice that Mr. Kahan claimed an exemption that exceeded $45,000.00. Only the Amended Schedule stated an exemption claim that the Trustee contends might not be warranted by California law. *See id.* at 1319-20, n.6 ("Because the time to object is relatively short, ... it is important that trustees ... be able to determine precisely whether a listed asset is validly exempt simply by reading a

debtor's schedules. Given that the debtor controls the schedules, we construe any ambiguity therein against him.").[4]

[3] We also reject Mr. Kahan's contention that his initial schedule claimed the *entire* Property as exempt. He focuses on the fact that the encumbrances on the Property exceed the stated fair market value of $375,000.00, because section 704.800 permits a forced sale of a homestead *only if* its sale price "exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances. . . ." Cal. Civ. Proc. Code § 704.800(a). Mr. Kahan's argument is premature, because the bar against a forced sale depends upon the actual sale price, not the value listed on his asset schedule. *In re Hyman*, 967 F.2d at 1320 n.8. Furthermore, the argument is irrelevant to the *amount* of his homestead exemption. *See id.* (Exemption amount must be entered into the calculation.).[5] The existence of encumbrances relates only to the propriety of a forced sale under California law, an issue which is irrelevant to the question on appeal of whether and to what extent the Property is part of the bankruptcy estate. We do not charge the Trustee with notice of an all-encompassing exemption claim where the schedules indicate that Mr. Kahan had no equity in the Property and that, therefore, there might be no value for the estate.

---

[4]Even if we charged the Trustee with an obligation to object to the initial schedule within 30 days of the creditors' meeting, his failure to object would only make the Property exempt to the extent claimed. 11 U.S.C. § 522(l); *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1319 (9th Cir. 1992). The Trustee does not contest the $45,000.00 exemption.

[5]*Rigby v. Hall (In re Hall)*, 1 F.3d 853 (9th Cir. 1993) (pet. for reh'g and suggestion for reh'g en banc pending), is not relevant to our decision. In that case, the effect of the homestead exemption under Washington law was to remove property from the estate. *Id.* at 855. *See* Wash. Rev. Code § 6.13.030 (1987) (limiting the *amount* of a homestead exemption to the lesser of $30,000.00 and the net value of the homestead); *id.* § 6.13.010(3) (defining the term "net value" as "market value less all liens and encumbrances"). We do not express an opinion upon the ultimate effect of the $45,000.00 exemption. We hold only that the amount of the exemption itself is $45,000.00.

2. The Amount of Mr. Kahan's Homestead Exemption

[4] We affirm the finding that Mr. Kahan's homestead exemption is limited to $45,000.00. Mr. Kahan initially claimed only a $45,000.00 exemption, meaning that the Trustee's failure to object did not cause either the entire Property or Mr. Kahan's joint tenancy interest to become exempt. The Amended Schedule entitles him to only a $45,000.00 exemption. *See Rigby v. Hall (In re Hall)*, 1 F.3d 853, 855 (9th Cir. 1993) (If debtors ambiguously claim "all" value in their residence is exempt under a statute, claim protects only the allowed exemption amount) (pet. for reh'g and suggestion for reh'g en banc pending).

Mr. Kahan argues extensively that *Taylor v. Freeland & Kronz*, 112 S. Ct. 1644 (1992), requires us to reverse the district court's judgment. In *Taylor*, the Supreme Court held that where the trustee fails to object timely to a claimed exemption, he cannot later contest the exemption, "whether or not [the debtor] had a colorable statutory basis for claiming it." *Id.* at 1648. *Taylor* is distinguishable from this case, because there the debtor made a broad (and unwarranted) exemption claim to which the trustee did not timely object. *Id.* at 1647 (Trustee did not object to claim exempting "proceeds from lawsuit" with "unknown" as its listed value, because he doubted that the lawsuit had any value.)

In addition, Mr. Kahan contends that *In re Reed* and *In re Hyman* ignore the requirement that courts liberally construe exemption statutes in favor of the bankruptcy debtor. We disagree. "We are mindful of the California authorities which admonish that 'the homestead statutes are to be construed liberally on behalf of the homesteader.' " *Anderson v. Redwood Empire Prod. Credit Ass'n (In re Anderson)*, 824 F.2d 754, 759 (9th Cir. 1987) (citations omitted). However, "liberal construction in favor of the debtor does not give us license to rewrite the [statutory language,]" *id.*, by allowing Mr. Kahan

a homestead exemption greater than $45,000.00, where the Trustee timely objected to Mr. Kahan's broad claim.

AFFIRMED.

APPENDIX B

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 92-56155

In re JOSEPH KAHAN,

Debtor.

DAVID SEROR,

Appellee,

v.

JOSEPH KAHAN,

Appellant.

ORDER

[Filed Setpember 16, 1994]

Before: PREGERSON, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

The members of the panel that decided this case voted unanimously to deny the petitions for rehearing and to reject

the suggestions for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for rehearing are denied and the suggestions for rehearing en banc are rejected.

APPENDIX C

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 92-2607 WDK

In re JOSEPH KAHAN

CIVIL MINUTES - GENERAL

[Filed August 19, 1992]

Present: Honorable William D. Keller

Attorneys present for Plaintiffs:

None Present

Attorneys present for Defendants:

None Present

PROCEEDINGS:

This is an appeal from a ruling by the United States Bankruptcy Court that Debtor Joseph Kahan ("Debtor") is limited to a homestead exemption of $45,000.00. This Court agrees with the

Bankruptcy Court that the decision in this case is dictated by the Ninth Circuit decisions in In re Hyman, 123 B.R. 342 (9th Cir. BAP 1991) and In re Reed, 940 F.2d 1317 (9th Cir. 1991). In both those cases, the Ninth Circuit and the Ninth Circuit Bankruptcy Appellate Panel rejected the very same arguments raised here. In fact, Debtor's counsel is the same attorney who prosecuted -- and lost -- both Hyman and Reed. Debtor has proffered no reason why those decisions should not control here, nor is this Court aware of any. Debtor's other contentions are without merit and need not be addressed by the Court. The judgment of the Bankruptcy Court is AFFIRMED.

IT IS SO ORDERED.

APPENDIX D

APPENDIX D

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

Bk. No. LA 86-05459 CA

Chapter 7

In re JOSEPH KAHAN,

Debtor.

ORDER ON TRUSTEE'S OBJECTION

TO AMENDED HOMESTEAD EXEMPTION

[Filed December 30, 1991]

In accordance with In re Hyman, 123 B.R. 342 (9th Cir. BAP 1991) and In re Reed, 940 F.2d 1317 (9th Cir. 1991), the debtor's homestead exemption should be limited to $45,000, and, therefore, the trustee's objection to the debtor's amended homestead exemption should be sustained. The trustee's request for

sanctions is denied.

IT IS HEREBY ORDERED:

1. That the trustee's objection to the debtor's amended homestead exemption is sustained.

2. That the trustee's request for sanctions is denied.

Dated: December 30, 1991

/s/ Calvin K. Ashland

CALVIN K. ASHLAND

UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE BY MAIL

I certify that a true copy of this ORDER was mailed this 3rd day of January, 1992 to the parties listed below:

U.S. Trustee's Office
3101 Federal Building
300 North Los Angeles Street
Los Angeles, CA 90012

Sandford L. Frey, Esq.
888 S. Figueroa Street
Suite 1800
Los Angeles, CA 90017

Richard Moneymaker, Esq.
700 So. Flower Street
Suite 2102
Los Angeles, CA 90017

Marc A. Beilenson

601 S. Figueroa

25th Floor

Los Angeles, CA 90017

Joseph Kahan

177 So. Poinsettia Place

Los Angeles, CA 90036

APPENDIX E

STATEMENT OF ALL PROPERTY OF DEBTOR
Schedules B-1, B-2, B-3, and B-4 must include all property of the debtors as of the date of the filing of the petition by or against him.
SCHEDULE B-1 - PROPERTY

Description and location of all real property in in which debtor has an interest (including equitable and future interests, interests in claims estates by the entirety, community property, life estates, leaseholds, and rights and powers exercisable for his own benefit)	Nature of Interest (specify all deeds and written instruments relating thereto)	Market Value of debtor's interest without deduction for secured listed in Schedule A-2 or exemptions claimed in Schedule B-4
		$
Single family residence at 177 So. Poinsettia Place Los Angeles, CA 90036 and more fully described as:		375,000.00

Lot 80 of Tract 7372, in the City of Los Angeles, as per Map recorded in Book 107 Page 81 to 83 of Maps, in the office of the County Recorder of said County.

1st T.D. $178,000.00
2nd T.D. $ 35,000.00
3rd T.D. $ 50,000.00
4th T.D. $120,000.00

Single family residence at: 375,000.00
301 No. Highland Avenue
Los Angeles, CA 90036
and more fully described as:
Lost 652 of Tract 6498, in the City of Los Angeles, as per Map recorded in Book 95, pages 53 to 55, inclusive of Maps, in the office of the County Recorder of said County, except the northerly 14.46 feet thereof.

1st T.D. $110,000.00
2nd T.D. $ 17,000.00
3rd T.D. $162,500.00

APPENDIX F

SCHEDULE B-4 - PROPERTY CLAIMED AS EXEMPT

Debtor selects the following property as exempt pursuant to 11 U.S.C. § 522(d) or the laws of the State of _____.

Type of Property	Location, description and, if relevant, the present use of the property.	Statute and section creating the exemption.	Value Claimed Exempt Dollars Cents
State Exemptions:			
Residence at: 177 So. Poinsettia Place Los Angeles, CA 90036		CCP 704.740	45,000.00
Furniture		CCP 704.720	10,000.00
Wearing Apparel		CCP 704.720	2,500.00
Life Insurance		CCP 704.100	-0-

Pension & Profit sharing plan	CCP 704.115	2,000.00
1984 Chrysler	CCP 704.010	8,200.00
1 Typewriter I.B.M. Selectric	CCP 704.060	500.00

APPENDIX G

SCHEDULE B-4 - PROPERTY CLAIMED
AS EXEMPT

Debtor selects the following property as exempt pursuant to 11 U.S.C. § 522(d) or the laws of the State of California.

Type of Property	Location, description and, if relevant, the present use of the property.	Statute and section creating the exemption.	Value Claimed Exempt Dollars Cents
		704.170	$
	The Debtor has only a one half joint tenancy in this property. The Debtor claims his entire one half joint tenancy interest as an exempt homestead, on the date of bankruptcy, pursuant to California		187,500.00

Code of Civil Procedure 704.710(c) and 704.720(a).

If the property were sold, the Debtor would be entitled to a $45,000 share of the sale proceeds pursuant to CCP 704.730(a)(2).

The Debtor also claims an exemption pursuant to Bankruptcy Code Section 522(b)(2)(B) which makes the total one half interest exempt pursuant to the rule of law in In re Reed

(Daily Journal Appellate Report
August 13, 1991 p. 9756) and
Schoenfeld v. Norberg 11 Cal. App.
3d 755, 766, 690 Cal. Rptr.